

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

OTIS MCDONALD, ADAM ORLOV,)
COLLEEN LAWSON, DAVID LAWSON,)
SECOND AMENDMENT FOUNDATION,)
INC., and ILLINOIS STATE RIFLE)
ASSOCIATION,)

Honorable Milton I. Shadur

Case No. 08-CV-3645

Plaintiffs,

V.

CITY OF CHICAGO, and MAYOR)
RICHARD M. DALEY,)

Defendants.

**MOTION TO VACATE ORDER
AND SET BRIEFING SCHEDULE**

Plaintiffs National Rifle Association of America, Inc., Robert Klein Engler, and Dr. Gene A. Reisinger (“NRA Plaintiffs”), by and through their counsel, Freeborn & Peters LLP, file this Motion to Vacate Order and Set Briefing Schedule, and in support hereof state as follows:

1. On July 23, 2008, the City of Oak Park (“Oak Park”) filed a motion in this matter to have Case No. 08-CV-3696, (the “Oak Park Action”) in which Oak Park is a defendant, reassigned to this Court (the “Reassignment Motion”). (Dkt. No. 24.) The NRA Plaintiffs are plaintiffs in the Oak Park Action. On the same day, Oak Park filed a Notice of Motion indicating that it had served the Reassignment Motion on counsel for the NRA Plaintiffs, William Howard, via facsimile and United States Mail. (Dkt. No. 25.) The Notice of Motion indicated that the Reassignment Motion would be presented to the Court on July 29, 2008 at 9:15 a.m. (*See id.*)

2. Mr. Howard did not receive the facsimile transmission of the Notice of Motion or the motion. (*See* Declaration of William N. Howard, at ¶ 3, 4, attached as Exhibit A.) Mr.

Howard received the mailed copies of the Notice of motion and the Reassignment Motion on July 29, 2008 at approximately 11:00 a.m. – after the hearing on the motion. (*Id.* at ¶ 4.) Because Mr. Howard is not counsel of record in this action, and the NRA Plaintiffs are not parties to this action, Mr. Howard did not receive ecf notice of the Reassignment Motion. (*Id.* at ¶ 4.)

3. As a result of not receiving timely notice of the Reassignment Motion, Counsel for the NRA Plaintiffs did not attend the hearing on the motion and was not able to request an opportunity to brief and argue the motion. Had the NRA Plaintiffs received notice of the Reassignment Motion, counsel would have appeared before the Court at the July 29 hearing and requested an opportunity to brief and argue the motion. (*Id.* at ¶ 5.)

4. On July 29, 2008, the NRA Plaintiffs learned by speaking with counsel for Oak Park that the Court granted the Reassignment Motion without argument but stated that the NRA Plaintiffs would be granted an opportunity to move the Court to reconsider its ruling.

5. The NRA Plaintiffs request an opportunity to brief and argue the Reassignment Motion because the ordinances at issue in Oak Park and Chicago have material differences and because the relief sought in the Oak Park case differs materially from the relief sought in this case.

WHEREFORE, the NRA Plaintiffs respectfully request that the Court vacate the order granting the Reassignment Motion and allow the NRA Plaintiffs 10 days to respond to that motion.

Dated: July 29, 2008

Respectfully submitted,

NATIONAL RIFLE ASSOCIATION OF
AMERICA, INC., ROBERT KLEIN
ENGLER, and DR. GENE A. REISINGER

By: s/ William N. Howard

Local Counsel:

William N. Howard, Esq.
Daniel S. Dooley
FREEBORN & PETERS LLP
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606
(312) 360-6534

Stephen P. Halbrook, Esq.
10560 Main St., Suite 404
Fairfax, Virginia 22030
(703) 352-7276
(*Pro Hac Vice* pending)

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

OTIS MCDONALD, ADAM ORLOV,)
COLLEEN LAWSON, DAVID LAWSON,)
SECOND AMENDMENT FOUNDATION,)
INC., and ILLINOIS STATE RIFLE) Honorable Milton I. Shadur
ASSOCIATION,)
) Case No. 08-C-3645
)
Plaintiffs,)
)
v.)
)
CITY OF CHICAGO, and MAYOR)
RICHARD M. DALEY,)
)
Defendants.)
)

DECLARATION OF WILLIAM N. HOWARD

I, William N. Howard, under penalty of perjury, hereby declare that the following statements are true and correct based on my personal knowledge:

1. I am an attorney licensed to practice in the State of Illinois and before this Court.

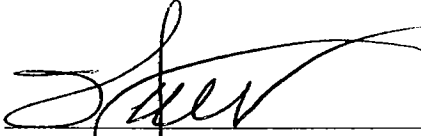
2. I am a partner with the law firm of Freeborn & Peters LLP, 311 S. Wacker Drive, Suite 3000, Chicago, Illinois 60606. I am counsel of record for Plaintiffs in *NRA v. Oak Park*, No. 08-cv-3696.

3. I did not receive notice that the Village of Oak Park would be presenting its Motion for Reassignment on Tuesday, July 29, 2008 prior to the Motion being heard, nor did I receive a copy of the Motion.

4. I received a copy, via U.S. Mail, of the Notice of Motion and Motion this morning, July 29, 2008, at approximately 11:00 a.m., and after the 9:15 motion call. I did

not receive a faxed copy of the Notice of Motion. Because I am not counsel of record in, nor are my clients parties to, *McDonald v. City of Chicago*, 08-c-2645, I did not receive an ecf copy of the Notice of Motion.

5. Had I received timely notice of the Motion for Reassignment, I would have appeared before the Court at the motion call this morning to request a briefing schedule due to the fact that my clients, the Plaintiffs in *NRA v. Oak Park*, oppose the Motion for Reassignment.



William N. Howard

Dated: July 29, 2008

CERTIFICATE OF SERVICE

I, William N. Howard, an attorney, certify that I caused a copy of this Notice, and the attachment(s) described therein to be served upon the below named party(ies), via electronic filing and/or U.S. Mail as specified below, pursuant to the local rules of the Northern District of Illinois, at or before 5:00 p.m., on July 29, 2008:

Via electronic filing:

David G. Sigale
Law Firm of David G. Sigale, P.C.
Corporate West 1
4300 Commerce Court, Suite 300-3
Lisle, Illinois 60532

Lance C. Malina
Jacob Karaca
Klein, Thorpe and Jenkins, Ltd.
20 N. Wacker Drive – Suite #1600
Chicago, IL 60606-2903

Via U.S. Mail and Facsimile:

Alan Gura
Gura & Possessky, PLLC
101 North Columbus Street – Suite #405
Alexandria, VA 22314
Fax: 703-997-7665

Stephen A. Kolodziej (Counsel for Plaintiff in *NRA v. Chicago*, No. 08-cv-3697)
Brenner, Ford, Monroe & Scott, Ltd.
33 North Dearborn Street – Suite #300
Chicago, IL 60602
Fax: 312-781-9202

Michael A. Forti (Counsel for Defendants in *NRA v. Chicago*, No. 08-cv-3697)
Mardell Nerim
Andrew W. Worseck
William Macy Aguiar
City of Chicago Department of Law
30 N. LaSalle Street – Suite #1230
Chicago, IL 60602
Fax: 312-742-3925

/s/William N. Howard